



December 8, 2004

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Oral *Ex Parte* Presentation, WC Docket No. 04-313, CC Docket No. 01-338

Dear Ms. Dortch:

On December 7, 2004, Wayne Huyard, Richard S. Whitt, and Curtis L. Groves, MCI, and A. Richard Metzger, Jr., Lawler, Metzger and Milkman, LLC, counsel to MCI, met separately with: Chairman Powell, Christopher Libertelli, Senior Legal Advisor to Chairman Powell, and Austin Schlick, Deputy General Counsel; Commissioner Martin and Dan Gonzalez, Senior Legal Advisor to Commissioner Martin; Commissioner Adelstein and Scott Bergmann, Senior Legal Advisor to Commissioner Adelstein; and Jessica Rosenworcel, Competition and Universal Service Legal Advisor to Commissioner Copps.

During these meetings, MCI discussed various issues relating to the remand by the U.S. Court of Appeals for the D.C. Circuit of the Commission's rules on unbundled network elements, consistent with MCI's previous written submissions in this docket and the attached presentation. In particular, and consistent with MCI's position that the evidence in this proceeding overwhelmingly supports nationwide findings of impairment with respect to mass market switching, DS-1 and DS-3 loops, and DS-1 and DS-3 transport, MCI emphasized the following.

Mass Market Switching / UNE-P

- A granular analysis of the evidence demonstrates impairment in all markets without UNE switching. The presence of intermodal competition in some markets does not alleviate or relieve impairment.
- In the event that no impairment is found in any or all markets, a reasonable transition is required to avoid consumer disruption and to allow CLECs an opportunity to manage their existing customer base.
- MCI has proposed a 34-month transition plan. A shorter transition – and in particular any transition that is shorter than what was established by the Interim Rules – would cause needless consumer disruption and confusion.

DS-1 and DS-3 Loops

- The proper geographic market for analyzing impairment for DS-1 and DS-3 loops is the individual building; an analysis by central office is not sufficiently granular.
- The Commission should find nationwide impairment. If it does not, it should adopt a two-wholesaler test, counting only those competitive LECs wholesaling service at the relevant capacity level using exclusively their own facilities.
- The Commission need not and should not apply a self-provisioning test, because no competitive LEC is self-provisioning loops at the DS-1 or DS-3 level. Competitive LECs that have self-provisioned high-capacity loops have done so at the OCn level, which incumbent LECs already are not required to unbundle. A competitive LEC that has self-provisioned OCn fiber in order to serve one customer in a building may in some instances be able to provision a limited number of DS-1 or DS-3 loops on that OCn fiber in order to serve another customer in the same building. But the options available to a carrier that has already provisioned OCn fiber are not relevant to the ability of a second competitive LEC (which does not have OCn fiber to the building) to self-provision DS-1 or DS-3 loops.
- The Commission should not apply service eligibility requirements, or use restrictions, to standalone loops. The Commission in fact need not and should not adopt any service eligibility requirements, at all, because the concern they were designed to address – preventing competitive LECs from using UNEs to provide long distance service – has become an anachronism, as bundled “all-distance” calling plans rapidly replace traditional long distance service.
- If the Commission does adopt service eligibility requirements, it should reinstate the requirements adopted in the *Triennial Review Order*, which were upheld by the D.C. Circuit in *USTA II*, and apply them only to loop/transport combinations, not to standalone loops. Applying service eligibility criteria to standalone loops would severely limit competitive LECs’ ability to provide services such as local private line, exchange access, and certain data services, including VoIP.
- Special access is not a substitute for unbundled DS-1 and DS-3 UNEs. To the extent that competitive LECs rely on special access today, their ability to serve customers is limited by footprint (because of mileage charges) and customer size (it is uneconomic to serve smaller businesses with few lines via special access). Further, because the Regional Bell Operating Companies (RBOCs) have obtained Section 271 authority and now compete directly with competitive LECs to offer services to enterprise customers, competitive LECs are faced with a price squeeze when they rely on above-cost special access inputs that the RBOCs are able to use at their economic cost.

DS-1 and DS-3 Transport

- The Commission should determine impairment on a route-by-route basis, and should find impairment unless the same four competitive CLECs are collocated with fiber in central offices at each end of a transport route. Because these competitive LECs are not necessarily providing transport on that route, this test captures both actual deployment and potential deployment.
- An impairment test based on line counts is less reliable, and a test that eliminates routes where no competitive alternatives exist is not an accurate indicator of barriers to entry.
- If a line-count test is adopted, the threshold adopted must minimize error costs. A benchmark of 50,000 lines creates relatively a small risk of error; any thresholds below 50,000 lines increase that error risk.

Respectfully submitted,

/s/ Richard S. Whitt

Richard S. Whitt

cc: Chairman Powell
Commissioner Martin
Commissioner Adelstein
Austin Schlick
Christopher Libertelli
Daniel Gonzalez
Scott Bergmann
Jessica Rosenworcel

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Triennial Remand Proceeding

Summary of MCI's
Positions



Mass Market Switching

Nationwide Impairment, Reasonable Transition

- **Granular analysis of the evidence demonstrates impairment in all markets without UNE switching.**
- **Intermodal competition does not relieve impairment.**
- **In the event of no impairment in any market, a reasonable transition is required.**
 - **MCI has proposed 34-month transition.**
 - **Shorter transition period – particularly one shorter than what was established by the Interim Rules – would cause needless consumer disruption and confusion.**

High-Capacity Loops

Unbundled Access, No Use Restrictions

- **Market-by-market analysis shows impairment.**
 - **No CLECs are self-deploying DS-1s or DS-3s.**
- **DS-1 loops are lifeblood of enterprise competition.**
- **Competition based on special access not viable long term.**
 - **CLECs can only compete for limited market segments today.**
 - **Above-cost pricing creates price squeeze as BOCs now compete for enterprise customers.**
- **Use restrictions could severely limit availability.**
 - **Applying use restrictions to stand-alone loops retreats from commitments to DS-1 unbundling.**

High-Capacity Transport

Unbundled Access, Realistic Test

- **Collocator-based test is sufficiently granular.**
 - **Unless the same four fiber-based collocators are on each end of a route, CLECs are impaired.**
 - **Line count test making transport unavailable where no competitive alternatives exist is not an accurate indicator of barriers to entry.**
 - » **Error costs too high, not granular enough.**
- **If the Commission bases test on line counts, number must minimize probability of error.**
 - **Benchmark of 50,000 lines creates relatively small risk of error.**
 - **Anything less than 50,000 lines increases the risk.**